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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.5137 OF 2006**

The Barshi Municipal Council, Barshi ... Petitioner

V/s.

Bhimashankar Uttareshwar Gadhave ... Respondent

Mr.Nitin Jamdar for Petitioner

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 14, 2007**

**P.C.:**

. The petitioner has challenged the orders dated 11.9.1998, 19.9.1998, 30.9.2004 and 21.3.2006. A complaint was filed by the respondent-workman under Items 1(a), (d) and (f) of Schedule IV of the MRTU & PULP Act. The Petitioner sought issuance of witness summons by its application dated 11.9.1998. The Labour Court rejected the application on the ground that the Petitioner had not affixed the process fee in accordance with law. A fresh application was made on 19.9.1998 by the Petitioner seeking to set aside the earlier order and the Petitioner stated that it was ready and willing to pay the process fee immediately. However, the Labour Court refused to set aside its earlier order. Aggrieved by these orders, the Petitioner filed a revision application being Revision Application No.111 of 1998.

By an order dated 30.9.2004, the Revision Application was dismissed on the ground that the powers of the Industrial Court in revision are limited and therefore, the Industrial Court had no jurisdiction to interfere with the orders of the Labour Court. A Review application was filed by the Petitioner being Review Application (ULP) No.3 of 2005. This application was rightly rejected since the Industrial Court has no powers under the MRTU & PULP Act to review its orders.

2. The respondent is absent, though served. Rule 26 of the labour Court (Practice and Procedure) Rules 1975 framed in exercise of the powers conferred on the Industrial Court under section 44 of the MRTU & PULP Act provides as follows:

> R.26. On the Court ordering issue of summons or notice, the party at whose instance summons or notice is to be issued shall file within 3 days of the order process fee for issuing and service of the summons or notice on each person at the rates specified in the annexed Table "A".

3. The Application made by the Petitioner for issuance of the witness summons was refused only because the process fee for issuing the witness summons was not

affixed. Rule 26 makes it amply clear that it is only when an order is passed issuing summons that the process fee has to be tendered to the Office of the Industrial Court within 3 days thereafter. The summons would then be issued and served on the witness. The question of submitting the process fee before the order was passed on the witness summons does not arise. Therefore, the Labour Court was in error in disallowing the application of the Petitioner.

4. In view of this, the aforesaid orders dated 11.9.1998, 19.9.1998 and 30.9.2004 are set aside. The petitioner has already filed the application dated 19.9.1998. The Labour Court shall decide whether to issue witness summons. The Petitioner shall thereafter pay the process fee and the witness may be summoned.

5. Writ Petition disposed off accordingly.